IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.298 OF 2006
WITH
CIVIL APPLICATION NO.383 OF 2006

Laxmikant P. Bagul. ..Appellant.

V/s.

Mun.Corporation of Gr.Bombay. ..Respondent.

Mr.Krishnakumar Tiwari for appellant.

Mrs.Geeta Jogalekar for BMC.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 28, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. Admit.

3. Mrs.Jogalekar waives notice for the respondent.

4. As short question is involved, appeal is taken up for final disposal forthwith by consent.

5. This appeal from order takes exception to the Judgment and order dated 13th April, 2006 on Draft

Notice Motion No. of 2006 in L.C.Suit No.1622 of 2006. The Lower Court by the impugned order has refused to grant ad-interim relief on recording following reasons.

. Firstly that the electricity bills produced by the plaintiff pertains to house No.65 Dindoshi Lucky Food Centre.

. Secondly, certificate under Bombay Shops and Establishment Act produced mentions business of chinese food items.

. Thirdly, it is stated that no photographs regarding existence of structure are produced.

. Fourthly, no prayer is made in motion that the suit structure is being demolished without following due process of law.

. Lastly, it is noted that the electricity bills and certificate do not indicate authorisation of the structure.

6. After having considered documents on record and the case made out by the plaintiff in the Notice

of Motion, which is supported by the documents in the shape of Patch Holder Card, Assessment Bills and other certificates issued by the authorities including electricity bills and telephone bills, existence of structure is prima facie established. The case of the respondent Corporation as stated on affidavit filed before this Court is that the appellant has not produced photographs showing existence of the structure. Merely because the photograph is not produced, existence of structure cannot be discarded, especially in the face of documentary evidence produced on record like Pitch Holder Card, Assessment Bills and other certificates which does refer to the business conducted by the plaintiff in the premises in the name of Lucky Chinese. Suffice it to observe that case for grant of interim relief was made.

7. Accordingly, the impugned Judgment and order is set aside and ad-interim order granted by this Court on 15th April, 2006 shall continue till disposal of the Notice of Motion.

8. It is made clear that the trial Court shall decide the Notice of Motion on its own merits in accordance with the law uninfluenced by any

observation made in the impugned order or for that purpose this order.

9. Hearing of the notice of Motion pending before the trial Court is expedited. All questions are left open.

10. Appeal as well as Civil application disposed of on the above terms.